

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

WASHINGTON STATE NURSES  
ASSOCIATION, on behalf of  
certain employees it  
represents,

Plaintiff,

v.

SACRED HEART MEDICAL CENTER,

Defendant.

NO. CV-08-0054-EFS

**ORDER GRANTING PLAINTIFF'S  
MOTION FOR REMAND TO STATE  
COURT AND DENYING MOTION FOR  
AWARD OF COSTS AND EXPENSES**

Before the Court, without oral argument, is Plaintiff Washington State Nurses Association's (the Association) Motion to Remand to State Court and for an Award of Costs and Expenses. (Ct. Rec. 5.) The Association argues federal subject matter jurisdiction is lacking because (1) its claims are based on state law and (2) it lacks standing to represent the nurses in a federal court action for monetary damages based on state law and, therefore, remand is necessary. Defendant Sacred Heart Medical Center (Sacred Heart) opposes the Association's motion, maintaining the Association's claims involve the parties' collective bargaining agreement (CBA) and, therefore, are preempted by the Labor Management Relations Act. After reviewing the submitted materials and

1 relevant authority, the Court is fully informed and finds Sacred Heart  
2 failed to establish that federal jurisdiction exists. Therefore, the  
3 Association's motion to remand is granted for the reasons given below;  
4 however, the Court denies the Association's request for fees and  
5 expenses.

6 **A. Standard**

7 This Court has jurisdiction, and removal is proper, for actions  
8 "arising under the Constitution, treaties or laws of the United States."  
9 28 U.S.C. § 1441(b). The removing-defendant has the burden of  
10 establishing federal jurisdiction. *Emrich v. Touche Ross & Co.*, 846 F.2d  
11 1190, 1195 (9th Cir. 1988) (citing *Wilson v. Republic Iron & Steel Co.*,  
12 257 U.S. 92, 97 (1921)). The removal statute is strictly construed  
13 against removal jurisdiction. *Id.*

14 **B. Remand Authority and Analysis**

15 The Court's inquiry into whether the Association's claims are  
16 preempted by the Labor Management Relations Act (LMRA), 29 U.S.C. §  
17 185(a), begins with asking whether "the asserted cause of action involves  
18 a right conferred upon an employee by virtue of state law, not by a CBA."  
19 *Burnside v. Kiewit Pac. Corp.*, 491 F.3d 1053, 1059 (9th Cir. 2007). The  
20 Association is claiming that Sacred Heart violated the Washington Minimum  
21 Wage Act (MWA), RCW 49.46.130, by failing to pay nurses one and one-half  
22 time their regular rate of pay for missed required rest breaks. The  
23 Court concludes the Association's claims are based on a right conferred  
24 by the MWA, not the CBA.

25 Accordingly, the Court turns to the second analytical step, which  
26 is whether the Association's MWA-based claims are "substantially

1 dependant" on an analysis of the CBA. See *Burnside*, 491 F.3d at 1059-  
2 60. The Court concludes the CBA need not be interpreted in order to  
3 determine whether Sacred Heart complied with the MWA. In the event that  
4 the Association is successful and damages need to be calculated,  
5 reference to the CBA will be required, but there is no indication that  
6 determining a particular nurse's wage rate will require *interpretation*  
7 of the CBA. See *Burnside*, 491 F.3d at 1074. Accordingly, even though  
8 the state court may need to refer to the CBA in order to determine  
9 damages, the Court concludes using the CBA in this manner does not result  
10 in LMRA preemption. See *id.*

11 Because the Court finds Sacred Heart failed to establish that  
12 federal subject matter jurisdiction exists, the Court need not address  
13 whether the Association has standing to bring its claims in federal  
14 court.

### 15 **C. Attorneys Fees and Costs**

16 The Court declines to exercise its discretion to award attorney's  
17 fees and costs under 28 U.S.C. § 1447(c).

18 For the foregoing reasons, **IT IS HEREBY ORDERED:**

19 1. Plaintiff's Motion to Remand to State Court and for an Award of  
20 Costs and Expenses (**Ct. Rec. 5**) is **GRANTED** (remand) **and DENIED** (attorneys  
21 fees and costs) **IN PART**.

22 2. This matter is **REMANDED** to Spokane County Superior Court (Case  
23 No. 07205766-2) for further proceedings.

24 **IT IS SO ORDERED.** The District Court Executive is directed to enter  
25 this Order and provide copies to counsel and a certified copy to the  
26

1 Clerk of the Superior Court of the State of Washington for Spokane  
2 County, Case No. 07205766-2.

3 **DATED** this 5<sup>th</sup> day of May 2008.

4  
5 S/ Edward F. Shea  
6 EDWARD F. SHEA  
7 United States District Judge

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